

## **REMARKS**

[0003] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 27-46 are presently pending. Claims 27-46 are amended herein. No claims are withdrawn or cancelled herein. No new claims are added herein either.

### **Formal Request for an Interview**

[0004] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0005] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

### **Claim Amendments**

[0006] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 27-46 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and

should not be construed as further limiting the claimed invention in response to the cited references.

### **Formal Matters**

[0007] This section addresses any formal matters (e.g., objections) raised by the Examiner.

### **Claims**

[0008] The Examiner objects to claims 27-46 for several reasons. The Examiner specifically objected to claim 27 as containing a typographical error. The Examiner further objected to claims 27-46 for including the term "media" instead of the term "medium." The Examiner also objected to claims 29 and 46 for using the term "the API" instead of the term "the computer-implemented API". Herein, Applicant amends these claims, as shown above, to correct the informalities noted by the Examiner.

### **Substantive Matters**

#### **Claim Rejections under §103(a)**

[0009] Claims 27-31, 34, 36-39 and 42-44 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,062,567 to Benitez in view of U.S. Patent No. 6,442,754 to Curtis.

**[0010]** Claims 32 and 33 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of U.S. Patent No. 6,496,979 to Chen.

**[0011]** Claim 35 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of U.S. Patent No. 6,931,546 to Kouznetsov and in further view of U.S. Patent Publication No. 200/0104015 to Barzilai.

**[0012]** Claim 40 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of Kouznetsov.

**[0013]** Claim 41 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of Barzilai.

**[0014]** Claim 45 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of Chen.

**[0015]** Claim 46 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Benitez and Curtis in view of Kouznetsov and Barzilai.

**[0016]** In light of the amendments presented herein, Applicant submits that these rejections are moot. Accordingly, Applicant asks the Examiner to withdraw these rejections.

## **Obviousness Rejections**

### **Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)**

[0017] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

### **Independent Claim 27**

[0018] Applicant submits that the combination of Benitez and Curtis does not teach or suggest at least the following elements as recited in this claim (with emphasis added):

- "issue a query of an install state of the client computing system to determine whether **a platform** necessary to the application is present on the client computing system"
- "receive the install state of the necessary platform present on the client computing system"

[0019] Applicant thanks the Examiner for conceding (See Action, page 5) that Benitez does not disclose:

- issue a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system; and
- receive the install state of the necessary platform present on the client computing system.

**[0020]** Instead of relying upon Benitez, the Examiner instead contends (see Action, p. 5) that Curtis teaches:

- issue a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system (*see Column 3: 61-67, "The program then executes the operating system command to determine whether the dependent components indicated in the dependency objects are installed in the computer."*); and
- receive the install state of the necessary platform present on the client computing system (*see Column 3: 61-67, "An indication is made as to the dependent components that are not installed after determining that dependent components are not installed."*).

**[0021]** The cited portion of Curtis states:

To overcome the limitations in the prior art described above, preferred embodiments disclose a system, method, program, and data structure for installing a program onto a computer including an operating system. Dependency objects indicate a dependent component on which the program to install depends. **The program processes the dependency objects before installing the program and determines an operating system command that is capable of determining whether the dependent component indicated in the dependency object is installed in the computer. The program then executes the operating system command to determine whether the dependent components indicated in the dependency objects are installed in the computer. An indication is made as to the dependent components that are not installed after determining that dependent components are not installed.**

[0022] As can be seen from reading Curtis, the operating system “determines whether the dependent components indicated in the dependency object are installed in the computer.” (See Curtis, Col. 3, lines 60-67). This is different than the present claim. Independent claim 27 requires issuing “a query of an install state of the client computing system to determine whether **a platform** necessary to the application is present on the client computing system.”

[0023] A platform, as described in the present application, comprises “any software upon which the application depends **but cannot be installed** as part of the deployed application install.” (See Specification, p. 17, lines 11-25). Curtis fails to teach or suggest that the dependent components indicated in the dependency object cannot be installed as part of the deployed application install.

[0024] Thus, for a least the above reasons, the combination of Benitez and Curtis fails to disclose each and every element and feature of independent claim 27. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of claim 27.

#### No Reason to Combine References

[0025] The Examiner acknowledges that Benitez does not teach issuing “a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system” and receiving “the install state of the necessary platform present on the client computing system.” (See action, p. 5). The Examiner therefore relies upon Curtis whose teachings are discussed above.

**[0026]** On pages 5 and 6 of the Action, the Examiner states:

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Curtis into the teaching of Benitez to include issue a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system; and receive the install state of the necessary platform present on the client computing system. The modification would be obvious because one of ordinary skill in the art would be motivated to implement all the depending programs' features and functions (*see Curtis – Column 3: 39-44*).

**[0027]** “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” KSR Int’l Corp. v. Teleflex, Inc., Slip Op. at 14 (U.S. Apr. 30, 2007) (quoting *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006)).

**[0028]** Applicant submits that the Examiner has not identified some evidence of a reason from the cited references themselves or from the knowledge of one of ordinary skill in the art that would have led one of ordinary skill in the art at the time of the invention (hereinafter, “OOSA”) to combine the disclosures of the cited references in the manner claimed. More specifically, there is no reason to combine because:

- the Examiner has not provided any objective and particular evidence showing why OOSA would be prompted to combine the teachings of the two references.

[0029] Accordingly, the Applicant therefore respectfully asks the Examiner to withdraw the rejections of these claims.

No Reason to Combine References: Original Reference solved Specified Problem

[0030] Applicant submits that because Benitez discloses utilizes a spoof database, one of ordinary skill in the art (OOSA) would have no reason to look to Curtis to solve a problem already solved by Benitez.

[0031] The above statement is draws on the reasoning of the BPAI presented in *Ex parte* Rinkevich (non-precedential decision) on May 29, 2007.

[0032] In its reasoning, the BPAI stated: "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon *ex post* reasoning," (quoting KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d at 1397. *See also* Graham v. John Deere Co., 383 U.S. at 36, 148 USPQ at 474). In that case, as in the matter as issue here, the Applicant raised the issue of improper hindsight reasoning. Therein the BPAI was persuaded that the problem or deficiency that the Examiner raised as motivation to seek out a secondary reference, "impermissibly used the instant claims as a guide or roadmap in formulating the rejection." The BPAI further quoted the Supreme Court in *KSR* stating that "[r]igid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it," KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d at 1397. Applying common sense to the case at hand, the BPAI concluded that "a person of ordinary skill in the art *having common sense* at the time of the invention would not have reasonably looked to Wu to solve a



problem already solved by Savill," (emphasis provided). Ultimately the BPAI found that the Examiner had impermissibly used the claims as a guide to formulate the rejection.

**[0033]** As in *Ex parte* Rinkevich, Applicant submits OOSA would have no reason to combine the teachings of Benitez with Curtis because Benitez already addresses preventing utilizing a spoof database to insure that the necessary files were available, (Benitez, col. 7, lines 7-22)), OOSA *having common sense* would not have reasonably looked to Curtis for such teaching since Benitez had already addressed the problem.

**[0034]** Benitez discloses a spoof database that creates a pseudo link for the necessary files to execute. Benitez creates links in the spoof database through which the execution of the application takes place. In this way, the client executes the application with the effect of the files being streamed from the server.

**[0035]** Benitez assumes that to run some applications will require access to certain shared libraries. Instead of insuring that the libraries are available on the client the device, Benitez insures that the files are there by creating file names that get added to the spoof database. These file names then directly link back to the server. Because Benitez provides a way to insure that the necessary components are available, there would be no motivation to look to querying the client device.

**[0036]** As shown above, the combination of Benitez and Curtis does not teach or suggest all of the elements and features of this claim. Further, there

would be no motivation to combine the teachings of Benitez and Curtis as Benitez provides a solution to the problem of insuring that the necessary files are available to the client device. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

#### **Dependent Claims 28-44**

[0037] These claims ultimately depend upon independent claim 27. As discussed above, claim 27 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

#### **Independent Claim 45**

[0038] Applicant submits that the combination of Benitez, Curtis and Chen does not teach or suggest at least the following elements as recited in this claim (with emphasis added):

- “issue a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system, wherein the installation of the application is aborted if the platform is not present and error information is returned in conjunction with aborting the installation of the application”
- “receive the install state of the necessary platform present on the client computing system”

**[0039]** As discussed previously, Benitez and Curtis do not teach or suggest the aforementioned claim elements and features. Chen does not rectify the deficiencies of Benitez and Curtis. Additionally, Applicant would reiterate that there would be no motivation to combine Benitez with Curtis as the Examiner suggests because Benitez provides a solution to the problem, namely insuring that the necessary platform is present on the client device. For at least the reasons discussed with reference to independent claim 27, applicant respectfully requests that the Examiner withdraw the rejection of independent claim 45.

**Independent Claim 46**

**[0040]** Applicant submits that the combination of Benitez, Curtis, Kouznetsov and Barzilai does not teach or suggest at least the following elements as recited in this claim (with emphasis added):

- “issue a query of an install state of the client computing system to determine whether a platform necessary to the application is present on the client computing system”
- “receive the install state of the necessary platform present on the client computing system”

**[0041]** As discussed previously, Benitez and Curtis do not teach or suggest the aforementioned claim elements and features. Kouznetsov and Barzilai do not rectify the deficiencies of Benitez and Curtis. Additionally, Applicant would reiterate that there would be no motivation to combine Benitez with Curtis as the Examiner suggests because Benitez provides a solution to the problem, namely

insuring that the necessary platform is present on the client device. For at least the reasons discussed with reference to independent claim 27, applicant respectfully requests that the Examiner withdraw the rejection of independent claim 46.

### **Dependent Claims**

[0042] In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

## **Conclusion**

[0043] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

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Representatives for Applicant

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